

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOMINGO CASTILLO MARCELINO, *individually*  
*and on behalf of others similarly situated*,

*Plaintiffs,*

-against-

374 FOOD, INC. (d/b/a TRIBECA BAGELS), TIRAN  
TSADOK, and HAYIM TSADOK.

*Defendants.*

Docket No.: **16-cv-06827 (KPF)**

**DECLARATION OF**  
**COLIN MULHOLLAND, ESQ.**

I, Colin Mulholland, Esq., declare under penalty of perjury, pursuant to 28 U.S.C. §1746:

1. I am an attorney for Plaintiff in the above-captioned action, and I have personal knowledge of the matters stated below. I submit this declaration in support of Plaintiffs' motion to preclude Defendants from presenting any evidence at trial challenging service of process on that basis that such a defense has been waived pursuant to Fed. Rul. Civ. Pro 12(h)(1)(A) and (B).

2. It is the understanding of Plaintiff that Defendants intend to challenge the efficacy of service of process for the Defendants.

3. Yet, Defendants never made a motion to dismiss the complaint prior to entering a responsive pleading on that basis pursuant to FRCP 12(b) and, moreover, Defendants entered an

answer that omitted any defense based on service of process from its recital of affirmative defenses.

**See Docket Entry 21** *Defendants' Answer*.

4. Wherefore, Plaintiff respectfully requests that the Court preclude the Defendants from offering any evidentiary material relating to service of process.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York  
June 21, 2017

/s/ Colin Mulholland  
Colin Mulholland, Esq.